and allowing them dividends as ordinary creditors under § 5 *f*, and not merely allowing them the surplus. But state courts which affirm that a partnership is an entity refuse to allow suits at law between a firm and its partners. *Kalamazoo Trust Co.* v. *Merrill*, 159 Mich. 649. See *Robertson* v. *Corsett*, 39 Mich. 777, 784.

BILLS AND NOTES — DEFENSES — EXCUSE FOR FAILURE TO GIVE NOTICE OF DISHONOR. — The defendants' testator, a director of a company, became an anomalous indorser on two of the company's notes, payable on demand to the plaintiff. To secure the anomalous indorsers a deed of trust to a third person of all the company's property was executed. Without any prior demand on the company, the plaintiff sued the director's estate on these notes. *Held*, that he may recover. *In re Alldred's Estate* (*No. 1*), 79 Atl. 141 (Pa.). See NOTES, p. 665.

BILLS AND NOTES — DOCTRINE OF PRICE *v.* NEAL — RECOVERY OF PAYMENT BY DRAWEE ON FORGED BILL. — The plaintiff bank paid a forged check drawn on it, to the defendant, a holder in due course. The defendant did not change his position. *Held*, that the plaintiff may recover the payment. *American Express Co.* v. *State National Bank*, 113 Pac. 711 (Okl.).

The great weight of authority denies recovery in such a case. *Price* v. *Neal*, 3 Burr. 1354; *National Park Bank* v. *Ninth National Bank*, 46 N. Y. 77. This court applied the doctrine that a recovery may be allowed of money paid through a mistake of fact. But that equitable doctrine ought not to apply unless some reason exists for equitable interference. See 4 HARV. L. REV. 279, 299. Since both parties here are innocent and each has given value on the faith of the signature, to allow recovery merely shifts the burden to a person who has an equal equity with the plaintiff. The rule of *Price* v. *Neal* follows accurately the doctrine of mistake of fact, and furthermore increases the security of holders in due course.

BILLS AND NOTES — PURCHASERS FOR VALUE WITHOUT NOTICE — KNOWLEDGE AT TIME OF BRINGING SUIT OF EQUITABLE DEFENSE. — A bank, the holder in due course of a note, learned of fraud and failure of consideration between the original parties. At maturity, it had in its hands sufficient general deposits of the payee-indorser to pay the note. But the bank sued the maker. *Held*, that it cannot recover. *Union National Bank* v. *Menefee*, 134 S. W. 822 (Tex., Ct. Civ. App.). See NOTES, p. 665.

CARRIERS — DISCRIMINATION AND OVERCHARGE — CARLOAD RATES TO FORWARDING AGENTS. — A railroad had lower rates for carload lots than for less than carload lots, and made a rule denying the advantages of this to forwarding agents who had been combining small shipments into carload lots and shipping at the lower rate. The Interstate Commerce Commission decided that this rule was unjust and discriminatory. *Held*, that its decision is correct. *Interstate Commerce Commission* v. *Delaware, Lackawanna & Western R. Co.*, 31 Sup. Ct. Rep. 392.

The Supreme Court rests its decision on the ground that a common carrier has no right to make the ownership of goods the criterion by which its charge for carriage shall be measured. This is a necessary corollary of the rule that rates must depend upon the cost of service, and is in itself unanswerable. But it leaves a serious part of the problem untouched. If forwarding agents can be regarded as dealers in transportation they are competitors of the railroads, and it would seem unfair that they should take advantage of the railroads' carload rates to gain for themselves their less than carload business. *Johnson* v. *Dominion Express Co.*, 28 Ont. 203; *Lindquist* v. *Grand Trunk Western Ry.*

Co., 121 Fed. 915. See *California Commercial Association* v. *Wells, Fargo & Co.*, 14 Interst. C. Rep. 422, 434; *Export Shipping Co.* v. *Wabash R. Co.*, 14 Interst. C. Rep. 437, 440. It is submitted, however, that the forwarding agents' real function is the collection and distribution of small shipments. For that they deserve compensation, and in that they are taking no unfair advantage of the railroads when they apply for carriage as members of the great body of shippers who must be served at reasonable and non-discriminatory rates.

CHOSES IN ACTION — WHAT MAY BE ASSIGNED — ASSIGNMENT OF TORT ACTION. — The plaintiff in an action for assault assigned the moneys which he might recover to a third person for a valuable consideration. The moneys recovered were attached at the suit of creditors of the assignor by garnishment. *Held*, that the assignee of the moneys obtained no rights by the assignment. *Webber* v. *Gaffin*, 9 East. L. Rep. 277 (Nova Scotia, Sup. Ct., Jan. 7, 1911).

The general statement of the law is that only those rights of action which survive the person may be effectively assigned. See *Zabriskie* v. *Smith*, 13 N. Y. 322; 3 POMEROY, EQUITY JURISPRUDENCE, § 1275. At common law, all actions arising *ex delicto*, and some *ex contractu*, notably for breach of promise of marriage, died with the party injured. *Chamberlain* v. *Williamson*, 2 M. & S. 408. See WILLIAMS, EXECUTORS, 10 ed., 606. By the statute 4 Edw. III., c. 7, it was enacted that an executor might sue for injuries to the personal property of the deceased. So, in accordance with the principle above stated, an assignment of a right to sue in trespass or trover is valid. *North* v. *Turner*, 9 Serg. & R. (Pa.) 244; *Jordan* v. *Gillen*, 44 N. H. 424. For the same reason, a right of action based on a wrong to the person could not be assigned. *Pulver* v. *Harris*, 52 N. Y. 73 (assault); *Hunt* v. *Conrad*, 47 Minn. 557 (false imprisonment). *Cf. Howard* v. *Crowther*, 8 M. & W. 601 (seduction). A judgment obtained in a tort action is assignable on the theory that the claim has become a debt. *Williams* v. *West Chicago St. Ry.*, 199 Ill. 57. Modern statutes have effected a great relaxation in the law. In England the Judicature Act (1873), § 25 (6), makes all choses in action assignable. But see *May* v. *Lane*, 64 L. J. Q. B. 236. The same result has been attained in this country by enactments providing for the survival of personal actions. *Gray* v. *McCallister*, 50 Ia. 497 (malicious prosecution); *Stewart* v. *Lee*, 70 N. H. 181 (breach of promise of marriage).

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — NEW YORK WORKMEN'S COMPENSATION ACT. — A New York statute provided that for all personal injuries sustained by workmen in eight dangerous employments, the employer should be liable for compensation, unless the injury be "caused in whole or in part by the serious and willful misconduct of the workman." The statute fixed a scale of compensation, by which a multiple of the daily earnings of the workman was recoverable for death, and a fraction for each day of disability. *Held*, that the statute violates the "due process of law" clause in the State Constitution. *Ives* v. *South Buffalo Ry. Co.*, 201 N. Y. 271. See NOTES, p. 647.

CONSTITUTIONAL LAW — IMPAIRMENT OF THE OBLIGATION OF CONTRACTS — VALIDITY OF STATUTE PROHIBITING LIMITATION ON SUITS. — The plaintiff took out an insurance policy in the defendant company, the policy providing that action on it must be brought within six months after the loss. A statute was later passed making invalid provisions in policies limiting to less than a year the time within which suits must be brought. A loss then occurred and the plaintiff brought action more than six months afterwards. *Held*, that the plaintiff can recover, the statute not impairing the obligation of the con-